

## **DRAFT**

### **Area-Wide Soil Contamination Task Force – Meeting 10 April 24, 2003, Wenatchee, WA**

#### **Meeting Summary**

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The Area-Wide Soil Contamination Task Force met for the tenth time on April 24, 2003 in Wenatchee. The objectives of this meeting were to:

- Review and refine the draft Task Force findings and recommendations on the nature and extent of area-wide soil contamination, vacant land, and application of the Model Toxics Control Act (MTCA), as well as other draft Task Force recommendations.
- Discuss potential recommendations for real estate disclosure.
- Review and refine initial cost estimates of the Task Force recommendations and discuss progress identifying possible funding sources.
- Review draft materials and schedule for public involvement activities in May.

#### **Update on Task Force Progress**

Elizabeth McManus of Ross & Associates gave an update on the progress the Task Force has made, noting that the Task Force is almost done answering the questions in its charge related to nature and extent of area-wide soil contamination and protective measures. The Task Force has developed a comprehensive set of draft recommendations. Remaining activities for the Task Force include the public involvement process, refining the Task Force report, and additional small group work on the MTCA approach and funding recommendations before the final Task Force meeting on June 16.

#### **Nature and Extent of Area-Wide Soil Contamination**

Task Force member Frank Peryea reviewed the changes that had been made to the draft Task Force report section on nature and extent of area-wide soil contamination since the draft report from the March Task Force meeting. These changes included the addition of text on concentration ranges of arsenic and lead in soil at properties affected by area-wide soil contamination; new maps of areas potentially affected by lead arsenate in Chelan, Okanogan, and Yakima counties; and recommendations for research on lead soil contamination in Washington from past use of leaded gasoline.

Task Force members noted that since the foundation of the Task Force recommendations is education, it is essential for the maps to be clear, easy-to-read, and understandable in color and when reproduced in black and white. Based on this discussion, Task Force members suggested several changes to the draft Task Force report text and accompanying maps on the nature and extent of area-wide soil contamination, including the following.

- Improve the readability and clarity of the maps (i.e., increase their size, use better colors, make sure information is understandable in black and white, revise the titles, add in reference points such as highways, etc.)

- Clarify the distinction in the text between area-wide soil contamination from off-site deposition of smelter emissions or application of pesticides and smelter operational sites or pesticide mixing locations which likely have higher concentrations of arsenic and lead.
- Add information to the text explaining that there is some evidence of downward movement of arsenic and lead in soils at some area-wide soil contamination sites.

### **Refinements to the Draft Task Force Report Text on Broad-Based Education and Awareness Building and Scenario-Specific Recommendations**

Elizabeth McManus of Ross & Associates reviewed the main additions and changes to the draft Task Force report sections on the approach to evaluating protective measures, broad-based education and awareness building, child-use areas, residential areas, and commercial areas. She also noted that there was new text in the draft report that proposes a study on the impacts of area-wide soil contamination on plants and animals. Task Force discussion focused on the need to define “low-to-moderate” contamination, the justification for why education is the foundation of the Task Force recommendations, how local and State agencies work together to address area-wide soil contamination, how the certification approach for childcare facilities would work, and reconciling the recommendations for data confidentiality in the residential scenario with the recommendations for updating maps and the application of MTCA. Ms. McManus reminded the Task Force of the importance of providing comments on this draft of the Task Force report, since the Task Force process is nearing completion.

Based on this discussion, Task Force members recommended the following changes to the draft Task Force report.

- Create a textbox explaining what is meant by low-to-moderate levels of contamination, using the range of concentrations from the preliminary estimates report prepared by the project team, other available data from the Department of Ecology (Ecology), and narrative description. (Task Force members noted that although it is important to provide information on the range of concentrations at area-wide soil contamination sites, the Task Force report should be careful not to indicate that there is a “bright-line” threshold between “high” and “low-to-moderate” levels.)
- Remove the textbox on what happens if local jurisdictions do not implement Task Force recommendations and replace it with a textbox giving an example of how State and local agencies have collaborated to address area-wide soil contamination (e.g., at Wenatchee schools). (Task Force members emphasized that local jurisdictions, in cooperation with the chartering agencies, should be leading efforts to respond to area-wide soil contamination, but the State should provide local jurisdictions with the support and resources needed for implementation and that the resources needed would vary across local jurisdictions.)
- Revise the text justifying the broad-based education and awareness building recommendations to be focused on the effectiveness and other positive aspects of an education program, rather than the negative aspects of other approaches such as widespread soil removal.
- Add more information, possibly in a textbox, about what Ecology and other agencies are currently doing to address area-wide soil contamination (e.g., the Tacoma smelter plume and Everett smelter projects) to provide additional context for the Task Force recommendations.

In addition, the project team will work with the protective measures and institutional frameworks and funding subgroups to do the following:

- Refine the recommendation for a voluntary certification program for childcare centers and family homes to be focused on the need to educate parents about steps a business has taken to respond to area-wide soil contamination. (Some Task Force members expressed concerns about how the certification program would be administered and whether the initial certification tiers were meaningful. The Task Force further recommended that the Department of Social and Health Services (DSHS) and the State Child Care Coordinating Committee be consulted about these recommendations.)
- Reconsider and resolve (if possible) the tension between the recommendations on confidentiality of sampling results for residents and the recommendations that Ecology update the maps over time to make them more precise and identify “area-wide soil contamination zones” for the alternate approach through MTCA. (Task Force members noted that it might be possible for Ecology to keep track of residential sampling data by section, rather than parcel, or only associate data with a number rather than a location.)

### **Agency Update on Other Arsenic and Lead Activities**

Linda Hoffman, Ecology Deputy Director, reviewed Ecology’s recent activities related to arsenic and lead soil contamination, including ongoing cleanup activities at Lincoln elementary school in Wenatchee, plans for cleanup at two additional elementary schools in eastern Washington, the upcoming release of data from soil testing at schools and daycares within the Tacoma smelter plume, focus group meetings conducted by the Tacoma-Pierce County Health Department to evaluate the effectiveness of educational materials, and plans for sampling in Kitsap and Thurston counties. Task Force member Marcia Riggers requested that Ecology coordinate with the Office of the Superintendent of Public Instruction about the release of data from soil testing at schools in the Tacoma smelter plume.

Dr. Jude Van Buren of the Department of Health mentioned that the Department is updating its arsenic fact sheet, has written its childhood lead poisoning prevention grant proposal (which mentions the Task Force’s recommendation for increased health monitoring), and has hired an epidemiologist who has studied the effectiveness of educational materials. She also referenced a recent study showing that health effects occur at lower levels of lead in children’s blood than had been previously thought; the project team will distribute this study to the Task Force. Ann Wick of the Department of Agriculture noted that the Puget Sound Water Quality Action Team released a report on the status of contaminants in water, sediments, and biota in Puget Sound.

### **Proposed Recommendations for Vacant Land Scenarios**

Task Force member Craig Trueblood reviewed the Task Force’s draft recommendations for vacant land being developed into other land uses and vacant land not proposed for development. The Task Force’s draft recommendations for these scenarios build on the foundation of broad-based education and awareness building and the draft recommendations for other land-use scenarios.

*For vacant land being developed,* the Task Force is concerned about exposure of people who live near or work at the development site and people who could be exposed after the site is

developed. Components of the approach the protective measures subgroup has discussed for vacant land being developed include:

- Broad-based education centered on local planning/permitting officials, who distribute educational materials, including guidance on soil testing and the selection and implementation of protection measures, to developers and others.
- Incorporating a question on whether the property is located in an area-wide soil contamination zone into the State Environmental Policy Act (SEPA) checklist.
- Encouraging developers to test soils prior to construction and incorporate appropriate protection measures (e.g., strategic containment and capping, soil tilling/blending, and/or soil removal and replacement) into construction plans.
- Encouraging developers to implement individual protection measures for workers during construction, consistent with Federal and State worker protection guidelines, and to promote the use of individual protection measures by future owners and tenants.
- Encouraging property owners to use plat (or other) notices to note property status (whether it has been sampled and/or whether protection measures are in place).
- Adoption of these practices by the chartering agencies to set an example for others.

*For vacant land that is not proposed for development*, the Task Force is considering recommending broad-based education and awareness building, especially focused on parents. In addition, for vacant land in or near residential areas, the draft Task Force report encourages property owners to take practical steps to limit trespassing (e.g., post signs) and to consider taking steps to limit potential for exposure to soil and wind-blown dust.

Task Force members commented that the approach recommended for vacant land being developed is consistent with local government efforts for the Everett smelter plume area and that it should be up to local jurisdictions to decide what actions to require of developers, based on the Task Force's recommendations. Linda Hoffman of Ecology noted that the recommendation for the agencies to set an example for their construction projects is consistent with Governor Locke's executive order on sustainability.

Based on this discussion, Task Force members suggested the following changes to the text on vacant land:

- Add text recommending that off-site movement of contaminated soils, through erosion and storm water runoff as well as dust, be controlled, consistent with State and local regulations.
- Note that the Task Force does not consider fallow agricultural land to be vacant land.
- Develop draft text on the issue of growing root crops such as carrots on land affected by area-wide soil contamination. (Task Force members Loren Dunn, Frank Peryea, Scott McKinnie, and Jim Hazen agreed to work with Ann Wick of the Department of Agriculture and the project team on this text.)

## **Real Estate Disclosure**

Task Force co-chair Steve Kelley reviewed some of the history of lead-based paint disclosure during real estate transactions, noting that before the legislature mandated the use of the real

property transfer disclosure statement, it was only sparsely used. Mr. Kelley urged the Task Force to develop recommendations consistent with the following four recommendations he has made to the Washington Association of Realtors.

1. Create legislation for a mandatory real property transfer disclosure statement for vacant land and encourage the voluntary use of the existing seller's property condition report for vacant land until this legislation is adopted.
2. Use the lead-based paint disclosure form and the EPA lead pamphlet for all transactions (not only sales of homes built before 1978) or use similar disclosure documentation for the potential presence of contaminated soils where area-wide soil contamination is likely.
3. Create an education course for real estate agents about area-wide soil contamination or incorporate information on the findings and recommendations of the Task Force into existing course materials.
4. Include an article in the *Washington Realtor* on the Task Force's findings and recommendations and describe key elements of individual protection measures.

Task Force members supported drafting recommendations that the chartering agencies should work with the Washington Association of Realtors to expand real estate disclosure practices to address area-wide soil contamination consistent with Mr. Kelley's recommendations. A few Task Force members commented that changes to disclosure practices should be made on a statewide basis, rather than only where area-wide soil contamination is likely. Finally, Dr. Jude Van Buren of the Department of Health observed that renters and tenants of multi-use properties should also be informed about area-wide soil contamination and appropriate protection measures; Task Force member Mike Wearne noted that in California bank employees are regularly informed about the environmental conditions (e.g., presence of asbestos or mold) of the buildings they work in.

- As a next step, the project team will work with Steve Kelley to develop draft text on real estate disclosure for the Task Force to consider, based on Mr. Kelley's recommendations to the Washington Association of Realtors.

### **Alternate Approach through MTCA for Area-Wide Soil Contamination Zones**

Task Force member Loren Dunn reviewed the alternate approach the MTCA subgroup has discussed for properties where area-wide soil contamination is likely. This approach consists of the following components:

- An alternative to the traditional site listing process under MTCA based on designating "area-wide soil contamination zones" where area-wide soil contamination is likely.
- Support for the activities the Task Force is recommending in area-wide soil contamination zones.
- Enforcement forbearance policy for properties with area-wide soil contamination if the Task Force recommendations for individual protection measures and other actions are being implemented.
- A self-implementing mechanism to provide recognition that (a) properties have been sampled and sample results show properties do not have elevated levels of arsenic and lead in soil and/or (b) property owners have implemented individual protection measures and other Task Force recommendations for the applicable land-use scenario.

- Use of the traditional MTCA process in certain site-specific circumstances, including when other forms of contamination are present (e.g., other contaminants, high levels of arsenic or lead, and/or ground water contamination) and when property owners desires the traditional approach (e.g., to seek a settlement or traditional MTCA liability assurance for a final remedy).

Task Force member Ray Paoella and Rick Roeder of Ecology described in more detail how the self-implementing mechanism for recognition that a site is clean might work in practice. Mr. Paoella noted that the process would be voluntary and could be administered electronically, similar to applying for financial aid for college. The MTCA subgroup had discussed three levels of recognition, ranging from obtaining information (level 1) and self-certification of sampling results and/or implementation of protection measures (level 2) to having an Ecology employee verify site conditions (level 3), similar to the traditional process for obtaining a No Further Action letter. Recognition for self-certification of sampling results and implementation of protection measures might be done generically, through written materials explaining how to interpret sampling results, or through a computer-based system that would print out standardized statements based on the information entered by the property owner.

Several Task Force members questioned whether a system that provides recognition that a site is clean without verification by Ecology is needed and whether such recognition would be useful for transactions such as loaning money or buying properties. Task Force members suggested that the Task Force report should more clearly state the objectives of different levels of property-specific certification/recognition. A number of Task Force members questioned whether a self-certification process is necessary or whether it would truly provide any incentive to property owners to implement the Task Force's recommendations. A few Task Force members also observed that developing this recognition system could increase public awareness and could create additional demand for sampling.

- The project team will work with the MTCA subgroup to consider the need for a self-implementing method of providing a property-specific response to affirm that actions have been taken to address area-wide soil contamination (such a system may not be needed) and to adjust the recommendations accordingly. In this work, the project team will keep in mind the need to create incentives for property owners to implement the Task Force's recommendations.

## **Initial Work on Cost Estimates and Funding Sources**

Jennifer Tice of Ross & Associates reviewed preliminary draft estimates of the costs to implement the Task Force's recommendations, including activities such as developing maps, broad-based education, research and monitoring, and soil sampling and implementation of protection measures at child-use areas and residences. The cost estimates are intended to provide a general sense of the level of financial resources needed to implement the Task Force's recommendations, based on available information, but actual costs will vary. Ms. Tice also mentioned several possible funding sources the institutional frameworks and funding subgroup has been considering.

Task Force members had several questions about individual estimates that had been developed and recommended the following changes to refine the estimates and their presentation.

- Incorporate ranges for the cost estimates in addition to averages to better reflect how actual costs may vary.
- Add disclaimers about the accuracy of the cost estimates to the introductory text.
- Consider and acknowledge non-monetary costs for individual protection measures such as time and inconvenience.
- Focus on easy, quick improvements to the estimates and correcting any major discrepancies between actual costs and the estimates, rather than on an effort to create highly detailed, “perfect” estimates.

Furthermore, Ann Wick of the Department of Agriculture suggested that the draft text recommending pursuing potentially liable parties as a potential funding source should be expanded to explain that it may be difficult to obtain much money from pesticide manufacturers, for example, and to clarify that no changes are being recommended to the current MTCA liability standards.

### **Review of Upcoming Public Involvement Activities**

Sarah Hubbard-Gray of Hubbard-Gray Consulting gave an overview of the upcoming public involvement activities and schedule and asked for Task Force comments on the draft public outreach materials. Task Force members made several editorial suggestions to improve the draft project “newsletter,” which presents the Task Force preliminary recommendations, and other draft public outreach materials. The changes included updating the newsletter text to reflect that the Task Force is considering but has not decided whether to recommend the self-implementing mechanism for site recognition or the voluntary certification program for daycares. The Department of Health also recommended that text from the Task Force report be added to the newsletter to describe the health effects of arsenic and lead and why people should be concerned about exposure to arsenic and lead.

In terms of outreach activities, the Task Force recommended additional newspapers that the newspaper ad should be printed in and suggested a number of additional organizations and individuals to invite to the focus group meetings. Finally, Task Force members requested the list of focus group participants, the schedule for the focus group meetings, and electronic copies of the final public outreach documents, including the newsletter and questionnaire, so Task Force members can distribute the materials to their constituencies.

### **Communication Report and Forecast**

Task Force members had no communication activities to report at this meeting, but signed up to attend the focus group meetings during the week of May 12th in Seattle/Tacoma, Wenatchee, Yakima, and Spokane. Linda Hoffman of Ecology mentioned that Ecology, in coordination with the Task Force co-chairs, will be developing a press release about the Task Force’s preliminary recommendations and will be contacting legislators that have expressed interest in the project before information is released to the media. Ecology will also update the MTCA Science Advisory Board about the project at the Board’s May 21 meeting.

## Public Comments

There were two opportunities for public comment provided during the meeting, during which the following comments were made.

- Lael Duncan of the Okanogan County Community Action Council said that there is a list of accredited labs for analysis of soil samples; this information is available on the Internet at: <http://www.ecy.wa.gov/programs/eap/labs/srchmain.htm>.
- Warren Hansen of Onsite Enterprises recommended that the nature and extent section of the Task Force report include brief descriptions or summaries of ongoing and completed remediation work in the smelter vicinities, particularly in association with (or directly on) the tier 2 maps. For example, the Tier 2 map of Harbor Island shows the entire island as an affected area, but does not include any reference or statement in the legend about the work done to date by the Port of Seattle, EPA, and others to address this residual soil contamination. He said that this information is needed to help present the issue with the proper perspective to the general public.
- Karen Pickett of Asarco said that Asarco does not have money to pay for actions to address area-wide soil contamination. She noted that the smelters were operating legally at the time the emissions that resulted in area-wide soil contamination occurred. She observed that the Task Force recommendations do not address other sources of lead and arsenic, including lead-based paint. Finally, she expressed concern that there are no focus group meetings planned for the Tacoma and south Pierce county area.

## Next Steps

- The facilitation team will be in touch with Task Force members to schedule conference calls to discuss feedback from the focus group meetings and subgroup calls to refine the draft Task Force recommendations.
- Task Force members will provide any additional comments on the draft Task Force report to the project team by **May 7**.
- The project team will revise the draft Task Force report based on comments received from Task Force members. Furthermore, the project team will revise the maps in the draft Task Force report to improve their readability and will develop draft text on real estate disclosure.
- The institutional frameworks and funding subgroup will reconsider and refine the recommendations for a daycare certification program, refine the draft cost estimates, and continue to discuss possible funding sources for the Task Force recommendations.
- The MTCA subgroup will reconsider and refine the recommendations for a self-implementing mechanism to provide recognition that a site is clean.
- Focus group meetings will be held **May 12-15** and other targeted public outreach activities will occur in May to solicit comments on the draft Task Force recommendations. The project team will work with the Task Force co-chairs to oversee this public involvement effort.
- The next Task Force meeting will be on **June 2, 2003** in **Yakima**. The final Task Force meeting will be on June 16 in SeaTac.



### Meeting Materials

- Agenda
- Summary of the March 6, 2002 Task Force meeting
- Summary of Task Force Recommendations
- Draft Area-Wide Soil Contamination Task Force Report dated 4/16/03
- List of major changes to the Task Force report since the 3/6/03 Task Force meeting
- Maps of Area-Wide Soil Contamination in Washington presentation
- Department of Ecology Associated Lead and Arsenic Related Activities and Communications Update handout
- Proposed Recommendations for Vacant Land Scenario(s) presentation
- Interim Report on the Area-Wide Soil Contamination Task Force for the Board of Directors of the Washington Association of Realtors
- Discussion Notes for Self-Implementing Mechanism(s) for Recognition that a Site is Clean
- Draft Cost Estimates for the Task Force's Recommendations handout
- Draft Summary of Potential Funding Sources for Responding to Area-Wide Soil Contamination handout
- Draft Area-Wide Soil Contamination Project newsletter and comment questionnaire
- Draft Area-Wide Soil Contamination newspaper ad, postcard, e-mail notice, and focus group initial invitation list

### Members in Attendance

Katherine Bridwell, SAFECO

Loren Dunn, Riddell Williams for Washington Environmental Council

Jim Hazen, Washington Horticultural Association

Linda Hoffman, Washington State Department of Ecology

Steve Kelley, Windermere Real Estate, Wenatchee

Steve Marek, Tacoma/Pierce County Health Department

Scott McKinnie, Far West Agribusiness Association

Laura Mrachek, Cascade Analytical

Ray Paoletta, City of Yakima

Frank Peryea, Washington State University Tree Fruit Research and Extension Center

Randy Phillips, Chelan-Douglas Health District

Marcia Riggers, Washington State Office of the Superintendent of Public Instruction

Paul Roberts, City of Everett

Ken Stanton, Douglas County Commission

Craig Trueblood, Preston Gates & Ellis

Jude Van Buren, Washington State Department of Health

Mike Wearne, Washington Mutual Bank

Ann Wick, Washington State Department of Agriculture

### Members Unable to Attend

Jon DeJong, Wenatchee School District

Steve Gerritson, Sierra Club

Ted Gage, Washington State Department of Community, Trade and Economic Development

### Consultant Support

Kris Hendrickson, Landau Associates

Sarah Hubbard-Gray, Hubbard-Gray Consulting

Elizabeth McManus, Ross & Associates Environmental Consulting

Anne Dettelbach, Ross & Associates Environmental Consulting

Jennifer Tice, Ross & Associates Environmental Consulting

Agency Staff and Ex Officio Alternates

Washington State Department of Ecology:

Don Abbott

Dave Bradley

Flora Goldstein

Dawn Hooper

Rick Roeder

Washington State Office of the Attorney General, Ecology Division:

Steve Thiele

Washington State Department of Health:

Jim White